

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 39 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
COMMISSIONER OF INCOME TAX

Versus

MUKESHBHAI M DESAI HUF

-----  
Appearance:

MR MANISH R BHATT for Petitioner  
Respondent served

-----  
CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.R.DAVE

Date of decision: 27/01/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for our opinion under Section 27(1) of the Wealth Tax Act, 1957:-

"Whether the Tribunal is right in law and on facts in holding that the gratuity liability not provided in books is required to be deducted for the purpose of working out the break up value of shares under Rule 1D of the W.T Rules, 1957?"

The Tribunal up-holding the decision of CWT (A) took the view that the gratuity liability not provided in books was required to be deducted for the purpose of working out the break-up value of shares under Rule 1D of the Wealth Tax Rules.

The provision of Rule 1D of the said Rules came up for consideration before the Hon'ble Supreme Court in Bharat Hari Singhania, reported in 207 ITR page 1, and the Supreme Court up-holding the validity of Rule 1D, held that it was required to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued. It was held that all the authorities under the Act including the Valuation Officer were bound by the said Rule. The Hon'ble Supreme Court also held that while valuing the unquoted equity shares of a company under Rule 1D, no deduction on account of capital gains tax which would have been payable in case the shares were sold on the valuation date, can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. Rule 1D is exhaustive on this subject.

In view of the decision of the Supreme Court in Bharat Hari Singhania (supra), we hold that the Tribunal was in error in holding that the gratuity liability not provided in books was required to be deducted for the purpose of working out the break-up value of the shares under Rule 1D of the said Rules. The question referred to us is therefore answered in the negative in favour of the Revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

-----

\*/Mohandas